

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SONIA RODRIGUEZ,

Plaintiff,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, GROUP
WELFARE BENEFITS PLAN OF
CONCUR TECHNOLOGIES, and
CONCUR TECHNOLOGIES, INC.,

Defendant.

CASE NO. 3:18-cv-5674-RBL

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS UNDER
12(B)(6) AND GRANTING
DEFENDANT'S MOTION FOR A
MORE DEFINITE STATEMENT
UNDER RULE 12(E)

INTRODUCTION

THIS MATTER is before the Court on Defendants Group Welfare Benefits Plan of Concur Technologies and Concur Technologies, Inc.'s (collectively "Concur") Motion to Dismiss with Prejudice and for a More Definite Statement. Dkt. #21. The underlying dispute in this case concerns the alleged denial of benefits in violation of the Employee Retirement Income Security Act of 1974 (ERISA).

According to the Complaint [Dkt. #1], Sonia Rodriguez was involved in a car accident on November 16, 2013, while working for Concur. She suffered neck and back injuries and

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DEFINITE STATEMENT UNDER RULE 12(E) - 1

1 obtained surgery on August 13, 2014, which still left her with significant issues. The Social
2 Security Administration deemed Rodriguez disabled on April 2, 2014. Prudential Insurance
3 Company of America deemed Rodriguez disabled under Concur's Group Welfare Benefits Plan
4 on August 7, 2014. Nonetheless, at some point after this, Rodriguez was denied benefits under
5 the Plan. Rodriguez alleges that this denial was the result of flawed "surveillance" of her
6 activities that was conducted in January 2015, July 2015, and April 2016. Rodriguez also claims
7 that her lawyers requested various information and materials related to Rodriguez's file and the
8 Plan from Prudential on December 27, 2016. However, no documents were provided.

9 In their Motion, Concur first challenges Rodriguez's claims for injunctive relief under
10 § 1132(a)(3), arguing that the requested injunctions are duplicative of her request for monetary
11 damages and do not allege the required type of "systemic" violation of fiduciary duties. Next,
12 Concur argues that Rodriguez's claim for penalties under § 1132(c) fails because she does not
13 allege that her request for information and materials was a written request directed to the Plan
14 administrator. Finally, Concur contends that Rodriguez must provide a more definite statement
15 of the grounds for her first claim under § 1132(a)(1)(B). According to Concur, the Complaint
16 currently does not provide fair notice because it fails to allege when Rodriguez was denied
17 benefits or which defendant was responsible for which aspect of the alleged misconduct.

18 For the reasons described below, Concur's Motion to Dismiss with Prejudice is
19 GRANTED in part and DENIED in part. Concur's Motion for a More Definite Statement is
20 GRANTED.

DISCUSSION

1. Legal Standard

Dismissal under Fed. R. Civ. P. 12(b)(6) may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege facts to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Although the court must accept as true the Complaint's well-pled facts, conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper 12(b)(6) motion to dismiss. *Vazquez v. Los Angeles Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnotes omitted). This requires a plaintiff to plead "more than an unadorned, the-defendant-unlawfully-harmed-me-accusation." *Iqbal*, 556 U.S. at 678 (citing *id.*).

Although *Iqbal* establishes the standard for deciding a Rule 12(b)(6) motion, Rule 12(c) is "functionally identical" to Rule 12(b)(6) and that "the same standard of review" applies to motions brought under either rule. *Cafasso, U.S. ex rel. v. General Dynamics C4 Systems, Inc.*, 647 F.3d 1047 (9th Cir. 2011), citing *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192

1 (9th Cir.1989); *see also* *Gentilello v. Rege*, 627 F.3d 540, 544 (5th Cir. 2010) (applying *Iqbal* to
2 a Rule 12(c) motion).

3 On a 12(b)(6) motion, “a district court should grant leave to amend even if no request to
4 amend the pleading was made, unless it determines that the pleading could not possibly be cured
5 by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242,
6 247 (9th Cir. 1990). However, where the facts are not in dispute, and the sole issue is whether
7 there is liability as a matter of substantive law, the court may deny leave to amend. *Albrecht v.*
8 *Lund*, 845 F.2d 193, 195–96 (9th Cir. 1988).

9 **2. Claim for Equitable Relief under § 1132(a)(3)**

10 The second claim in the Complaint requests equitable relief under 29 U.S.C. § 1132(a)(3)
11 in the form of “an injunction barring Defendant from relying on the medical reports Prudential
12 obtained . . . [,] barring Defendants from enforcing any LTD benefits termination or appeal
13 denial utilizing as support the medical reports Prudential obtained . . . [,] [and] ordering
14 Defendants to pay [Rodriguez] her LTD benefits under The Plain.” Dkt. #1, at 11. Concur argues
15 that this claim must be dismissed because § 1132(a)(3) is a “catchall” that can only be invoked
16 when other sections of § 1132 do not adequately address the plaintiff’s injury, which is not the
17 case here. Concur also argues that Rodriguez has not pled the kind of “systemic wrongdoing”
18 required for an ERISA breach of fiduciary duty claim. In response, Rodriguez simply quotes
19 § 1132(g)(2)(E)’s statement that courts may award “such other legal and equitable relief the
20 Court deems appropriate.” She does not discuss § 1132(a)(3), which is the basis of claim II in the
21 Complaint.

22 To state a claim for breach of fiduciary duties under ERISA, “a plaintiff must allege that
23 the denial of benefits is part of a larger systemic breach of fiduciary obligations in order to

1 advance a claim for breach of fiduciary duty based on the denial of his individual benefits.”
2 *Nielsen v. Unum Life Ins. Co. of Am.*, 58 F. Supp. 3d 1152, 1165 (W.D. Wash. 2014) (citing
3 *Amalgamated Clothing & Textile Workers Union, AFL–CIO v. Murdock*, 861 F.2d 1406, 1414
4 (9th Cir.1988)). In addition, § 1132(a)(3) may only be used to “fashion a remedy that ‘inures to
5 the benefit of the plan as a whole.’” *Amalgamated Clothing*, 861 F.2d at 1413-1414 (quoting
6 *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 140 (1985)).

7 As for individual equitable relief under § 1132(a)(3), such relief “is available only when
8 no alternative means of relief, such as for monetary damages under § 1132(a)(1)(B), are
9 available.” *Nielsen*, 58 F. Supp. 3d at 1165 (citing *Varity Corp. v. Howe*, 516 U.S. 489, 515
10 (1996)) (dismissing equitable relief claim with prejudice); *see also Providence Health Sys.-*
11 *Washington v. Bush*, 461 F. Supp. 2d 1226, 1232 (W.D. Wash. 2006) (“ERISA does not provide
12 a cause of action for legal actions for monetary damages disguised as suits in equity.”).

13 Here, Rodriguez’s request for an “injunction ordering Defendants to pay her LTD
14 benefits under The Plan” is clearly a request for legal damages masquerading as injunctive relief.
15 Dkt. #1, at 11. ERISA does not provide for such relief when a plaintiff has already invoked
16 § 1132(a)(1)(B), as Rodriguez does in her first claim. Rodriguez’s appeal to 1132(g)(2) is
17 irrelevant because that provision specifically concerns actions brought *by* a fiduciary, which
18 Rodriguez is not.

19 Rodriguez’s request for injunctions barring reliance on the medical reports Prudential
20 obtained are likewise problematic. While Rodriguez does allege that Defendants have a “long
21 history of employing” consultants that produce biased reports that enable denial of claims, the
22 remedy that Rodriguez requests is specific to her and would not benefit other members of the
23 Plan. It therefore runs afoul of the holdings of *Amalgamated Clothing* and *Russell* that relief

1 under § 1132(a)(3) must “inure to the benefit of the plan as a whole.” 861 F.2d at 1413-1414;
2 473 U.S. at 140.

3 Because Rodriguez’s request for an injunction ordering payment of benefits is fatally
4 flawed and duplicative with her § 1132(a)(1)(B) relief, the Motion to Dismiss with Prejudice is
5 granted as to that claim. It is denied as to the remaining claims for injunctive relief and
6 Rodriguez shall be granted leave to amend within 21 days to address the shortcomings described
7 above.

8 **3. Claim for Statutory Penalties under § 1132(c)**

9 Concur argues that Rodriguez’s fourth claim for penalties resulting from Concur’s
10 alleged failure to furnish requested documents relevant to Rodriguez’s claim must also be
11 dismissed. Concur contend that the Complaint fails to allege that Rodriguez directed a *written*
12 request to the plan administrator, which is Concur. Rodriguez responds that the Complaint does
13 allege that Concur received the request through its attorney. Dkt. #1, at 12. Rodriguez also
14 argues that the letter was directed to Concur’s Bellevue address that was indicated on the
15 Summary Plan Description in Rodriguez’s possession.

16 Section 1132(c)(1) provides that plan participants can recover up to \$110 per day if the
17 plan administrator “fails or refuses to comply with a request for any information which such
18 administrator is required . . . to furnish to a participant or beneficiary . . . within 30 days after
19 such request [has been made].”¹ The requirements invoked by Rodriguez come from
20 § 1024(b)(4), which states, “The administrator shall, upon written request of any participant or
21 beneficiary, furnish a copy of the latest updated summary, plan description, and the latest annual
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23 ¹ The amount of \$100 that is in the statute was increased to \$110 by 29 C.F.R. § 2575.502c–1.

1 report, any terminal report, the bargaining agreement, trust agreement, contract, or other
2 instruments under which the plan is established or operated.” Courts have held that a plaintiff
3 must allege that they sent a *written* request to state a claim under § 1132(c)(1). *Anderson v. Sun*
4 *Life Assur. Co. of Canada*, No. CV-12-145-TUC-CKJ, 2012 WL 5392268, at *4 (D. Ariz. Nov.
5 5, 2012); *Serpa v. SBC Telecommunications, Inc.*, 2004 WL 3204008, at *3 (N.D.Cal.2004)
6 (stating that the plaintiff “must identify a specific, *written* request for plan documents”). The
7 request must also “provide the plan administrator with clear notice of what information the
8 beneficiary desires.” *Serpa*, 2004 WL 3204008, at *3 (internal quotation marks omitted). Only
9 the plan administrator may be held liable under § 1132(c). *Moran v. Aetna Life Ins. Co.*, 872
10 F.2d 296, 298-99 (9th Cir. 1989).

11 Here, Concur is correct that the Complaint does not clearly allege a specific, written
12 request for information consistent with § 1024(b)(4). However, this should be easily remedied
13 through amendment. The Court also disagrees with Concur’s reading of *Moran* as holding that a
14 plaintiff must have directed their request to the administrator. *Moran*’s holding addressed who
15 can be sued under § 1132(c) and the statutory definition of “plan administrator.” *See* 872 F.2d at
16 298-99. In contrast, neither § 1132(c)(1) nor § 1024(b)(4) explicitly state that the request must be
17 “directed” to the administrator. Nonetheless, if Rodriguez did direct her request to Concur, she
18 would be advised to allege as much in her amended complaint.

19 **4. Concur’s Motion for a More Definite Statement under Rule 12(e)**

20 Concur argues that the allegations in Rodriguez’s first claim for monetary damages under
21 § 1132(a)(1)(B) are insufficient to put the defendants on notice of the grounds for Rodriguez’s
22 claims. More specifically, Concur contends that the allegations fail to state the date that benefits
23 were discontinued and fail to identify which defendant did what. To justify the need for more

1 information, Concur points to the requirements that ERISA actions may only be brought against
2 an appropriate defendant based on their individual liability and are subject to a contractual
3 periods of limitations. *See Townsley v. Lifewise Assurance Co.*, No. C15-1228-JCC, 2016 WL
4 1393548, at *1 (W.D. Wash. Apr. 8, 2016); *Cyr v. Reliance Standard Life Ins. Co.*, 642 F.3d
5 1202, 1207 (9th Cir. 2011). Rodriguez does not object to Concur's request for a more definite
6 statement.

7 Rule 12(e) states, "A party may move for a more definite statement of a pleading to
8 which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot
9 reasonably prepare a response." Fed. R. Civ. P. 12(e). Concur is correct that the Complaint fails
10 to identify when exactly Rodriguez was deemed ineligible for benefits. In the facts section, the
11 Complaint jarringly moves from explaining how Prudential and the Social Security
12 Administration deemed Rodriguez "disabled" to alluding to how Prudential "cherry picked the
13 facts" and referring to Prudential's "denial letters." Dkt. #1, at 4-5. A key missing fact is *when*
14 such denial letters were issued. Rodriguez must address this issue in her amended complaint. She
15 should also, to the extent possible, describe which aspects of the allegedly unlawful conduct each
16 defendant (or both) was responsible for.

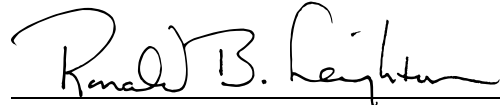
17 CONCLUSION

18 For the above reasons, the Motion to Dismiss with Prejudice [Dkt. #21] is (1) GRANTED
19 with respect to Rodriguez's claim for an injunction ordering Defendants to pay her benefits
20 under the Plan and (2) DENIED as to all other claims. The Motion for a More Definite Statement
21 [Dkt. #21] is GRANTED. Rodriguez shall file an amended complaint addressing the
22 shortcomings with her remaining requests for injunctive relief under § 1132(a)(3), her claim for
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1 § 1132(c) penalties, and her claim for monetary damages under § 1132(a)(1)(B), as described in
2 this Order. The amended complaint must be filed within 21 days of this Order.

3 IT IS SO ORDERED.

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5 Dated this 5th day of March, 2019.

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8 Ronald B. Leighton
9 United States District Judge
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